

**ASSEMBLY BILL**

**No. 928**

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**Introduced by Assembly Member Jerome Horton**

February 18, 2005

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An act to amend Section 1717 of the Civil Code, relating to attorney's fees.

LEGISLATIVE COUNSEL'S DIGEST

AB 928, as introduced, Jerome Horton. Attorney's fees.

Existing law provides, in any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, that the prevailing party on the contract, whether he or she is the party specified in the contract or not, is entitled to reasonable attorney's fees, as fixed by the court, in addition to other costs. Existing law also provides, in any action on a contract based on a book account that does not provide for attorney's fees and costs, that the prevailing party on the contract is entitled to reasonable attorney's fees, as fixed by the court according to a specified formula, in addition to other costs. Those attorney's fees are limited to the lesser of the maximum amount under that formula, the amount provided by any default attorney's fee schedule adopted by the court, or an amount otherwise provided by the court, as specified.

This bill would provide that in no event shall the attorney's fees awarded pursuant to the former provision be less than the fees that would have been awarded had the fees been calculated pursuant to the latter provision.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1717 of the Civil Code is amended to read:

1717. (a) In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs.

Where a contract provides for attorney's fees, as set forth above, that provision shall be construed as applying to the entire contract, unless each party was represented by counsel in the negotiation and execution of the contract, and the fact of that representation is specified in the contract.

Reasonable attorney's fees shall be fixed by the court, and shall be an element of the costs of suit. *However, in no event shall the attorney's fees awarded be less than the fees that would have been awarded had the fees been calculated pursuant to subdivision (a) of Section 1717.5.*

Attorney's fees provided for by this section shall not be subject to waiver by the parties to any contract which is entered into after the effective date of this section. Any provision in any such contract which provides for a waiver of attorney's fees is void.

(b) (1) The court, upon notice and motion by a party, shall determine who is the party prevailing on the contract for purposes of this section, whether or not the suit proceeds to final judgment. Except as provided in paragraph (2), the party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract. The court may also determine that there is no party prevailing on the contract for purposes of this section.

(2) Where an action has been voluntarily dismissed or dismissed pursuant to a settlement of the case, there shall be no prevailing party for purposes of this section.

Where the defendant alleges in his or her answer that he or she tendered to the plaintiff the full amount to which he or she was entitled, and thereupon deposits in court for the plaintiff, the amount so tendered, and the allegation is found to be true, then

1 the defendant is deemed to be a party prevailing on the contract  
2 within the meaning of this section.

3 Where a deposit has been made pursuant to this section, the  
4 court shall, on the application of any party to the action, order the  
5 deposit to be invested in an insured, interest-bearing account.  
6 Interest on the amount shall be allocated to the parties in the  
7 same proportion as the original funds are allocated.

8 (c) In an action which seeks relief in addition to that based on  
9 a contract, if the party prevailing on the contract has damages  
10 awarded against it on causes of action not on the contract, the  
11 amounts awarded to the party prevailing on the contract under  
12 this section shall be deducted from any damages awarded in  
13 favor of the party who did not prevail on the contract. If the  
14 amount awarded under this section exceeds the amount of  
15 damages awarded the party not prevailing on the contract, the net  
16 amount shall be awarded the party prevailing on the contract and  
17 judgment may be entered in favor of the party prevailing on the  
18 contract for that net amount.